

Original sponsor(s): REP. DAVIDSON, Hoffman, MacLean, Goll, Jacko,
Collins, Grussendorf, Menard

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the protection of Alaska Native
7 human remains and funerary objects; and relating to
8 discovery, possession, sale, barter, and display of
9 human remains."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 12.65 is amended by adding new sections to read:

12 ARTICLE 2. HUMAN REMAINS.

13 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as pro-
14 vided in (b) of this section, a person who encounters human remains in
15 or on the ground shall

16 (1) immediately cease any activity that may cause further
17 disturbance of the area; and

18 (2) report the presence and location of the remains to the
19 nearest law enforcement agency as soon as possible considering the
20 location of the discovery and the availability of communication alter-
21 natives.

22 (b) The requirements of (a) of this section do not apply to a
23 person who encounters human remains while operating under a permit
24 issued under AS 41.35.080.

25 (c) If the law enforcement agency determines that remains re-
26 ported to it under (a) of this section are unrelated to a prosecutable
27 offense and may be Native human remains, the agency shall notify the
28 Department of Natural Resources.

29 (d) A person who knowingly fails to comply with (a) of this

1 section is guilty of a class A misdemeanor.

2 Sec. 12.65.160. UNLAWFUL ACTS. A person may not sell, buy, or
3 barter human remains. A person may not display human remains except
4 in connection with funeral or burial rites or as required for medical,
5 educational, or law enforcement activities. A person who violates
6 this section is guilty of a class A misdemeanor.

7 Sec. 12.65.170. DEFINITION. In AS 12.65.150 - 12.65.170, "human
8 remains" means a dead human body, or part of a dead body, in any stage
9 of decomposition.

10 * Sec. 2. AS 41.35.040 is amended to read:

11 Sec. 41.35.040. ADMINISTRATION AND FINANCIAL SUPPORT OF MONU-
12 MENTS AND HISTORIC SITES. State-owned monuments, sites, and other
13 historic, prehistoric, or archeological properties owned or purchased
14 by the state are under the control of the department, and their main-
15 tenance shall be covered in the appropriations made to the department.
16 Privately owned state monuments or historic sites are eligible to
17 receive state support for their maintenance, restoration, and reha-
18 bilitation if they are kept accessible to the general public, they are
19 in compliance with state laws pertaining to Native human remains and
20 funerary objects, and application for support is made in conformity
21 with regulations adopted by the commissioner.

22 * Sec. 3. AS 41.35.060(a) is amended to read:

23 (a) The department, with the recommendation of the committee,
24 may acquire real and personal properties that have statewide historic,
25 prehistoric, or archeological significance by gift, purchase, devise,
26 or bequest. If the department acquires disinterred human remains or
27 funerary objects under this subsection, it shall comply with AS 41.-
28 35.410. The department shall preserve and administer property so
29 acquired. The department may acquire property adjacent to the

1 property having historic, prehistoric, or archeological significance
2 when it is determined to be necessary for the proper use and adminis-
3 tration of the significant property.

4 * Sec. 4. AS 41.35.070 is amended by adding a new subsection to read:

5 (h) If the department discovers human remains or funerary ob-
6 jects during a survey under (d) of this section, the department shall
7 comply with AS 12.65.150 and AS 41.35.410.

8 * Sec. 5. AS 41.35.080 is amended to read:

9 Sec. 41.35.080. PERMITS. The commissioner may issue a permit
10 for the investigation, excavation, gathering, or removal from the
11 natural state [,] of any historic, prehistoric, or archeological
12 resources of the state or human remains or funerary objects reported
13 under AS 12.65.150 or AS 41.35.410. A permit may be issued only to
14 persons or organizations qualified to make the investigations, exca-
15 vations, gatherings, or removals and, except as otherwise provided in
16 permit restrictions included under (b) of this section, only if the
17 results of these authorized activities will be made available to the
18 general public through institutions and museums interested in dissemi-
19 nating knowledge on the subjects involved. If the historic, prehis-
20 toric, or archeological resource involved is one that [WHICH] is, or
21 is located on a site that [WHICH] is, sacred, holy, or of religious
22 significance to a cultural group, the consent of that cultural group
23 must be obtained before a permit may be issued under this section.

24 * Sec. 6. AS 41.35.080 is amended by adding a new subsection to read:

25 (b) If the area for which a permit is issued under (a) of this
26 section contains, or is reasonably expected to contain, human remains
27 or funerary objects, the department shall include in the permit re-
28 strictions and procedures for the treatment and disposition of the
29 human remains and funerary objects. The restrictions and procedures

1 may not conflict with the requirements of AS 41.35.410 and, notwith-
2 standing AS 09.25.110 - 09.25.120 and (a) of this section, may provide
3 for restrictions on the disclosure of information related to Native
4 human remains and funerary objects that may be discovered.

5 * Sec. 7. AS 41.35.090 is amended to read:

6 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
7 construction, alteration, or improvement of any nature is undertaken
8 on a privately owned, officially designated state monument or historic
9 site by any person, the person shall give the department three months'
10 [MONTHS] notice of intention to construct on, alter, or improve it.
11 If the construction, alteration, or improvement involves known Native
12 human remains or funerary objects for which the tribe of origin is
13 reasonably identifiable, the person shall also give the governing body
14 of the tribe three months' notice of intention to construct, alter, or
15 improve. Before the expiration of the three-month notification
16 period, the department shall either begin eminent domain proceedings
17 under AS 41.35.060(b) or undertake or permit the recording and salvag-
18 ing of any historic, prehistoric, or archeological information con-
19 sidered necessary.

20 * Sec. 8. AS 41.35.230 is amended to read:

21 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 -
22 41.35.240], unless the context otherwise requires,

23 (1) [REPEALED

24 (2)] "committee" means the Historic Sites Advisory Commit-
25 tee;

26 (2) "funerary objects" means items that are reasonably
27 believed to have been intentionally placed with the remains of a
28 Native, either at the time of burial or interment or at some subse-
29 quent time, as a part of the death rites or ceremonies of a culture;

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(3) [REPEALED

(4)] "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, grave sites [GRAVES], artifacts, fossils, or other objects of antiquity that [WHICH] provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state, except that the term does not include human remains or funerary objects;

(4) "human remains" means a dead human body, or part of a dead body, in any stage of decomposition, excluding nonskeletal body parts shed during life, such as hair, nails, and isolated teeth;

(5) "Native" means a person who is a descendant or ancestor of the aboriginal races inhabiting the state when it was annexed to the United States or a descendant or ancestor of an Indian or Eskimo who, after the year 1867, migrated into the state from Canada;

(6) "reasonably identifiable" means identifiable, by a preponderance of the evidence, as to individual, familial, or tribal origin based on available archeological, historical, ethnological, or other direct circumstantial evidence or expert opinion;

(7) "tribe" means a group recognized as a tribe by the United States Secretary of Interior, or a Native village or regional corporation or other Native group defined in or established under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act).

* Sec. 9. AS 41.35 is amended by adding a new section to read:

ARTICLE 3. DISCOVERY OF HUMAN REMAINS AND FUNERARY OBJECTS.

Sec. 41.35.400. POLICY. It is the policy of the state that no person can lawfully assert title to human remains. The right of disposition of human remains lies with the state unless the decedent's living relatives or tribe are reasonably identifiable as provided in

1 AS 41.35.410.

2 Sec. 41.35.410. HUMAN REMAINS AND FUNERARY OBJECTS. (a) When
3 human remains are discovered by or reported to the department, the
4 department shall notify the nearest law enforcement agency unless a
5 report has already been made under AS 12.65.150. After law enforce-
6 ment activities related to the remains have ceased, the department
7 shall comply with (c) of this section.

8 (b) A person who discovers objects that may be funerary objects
9 in or on the ground shall promptly report the discovery to the depart-
10 ment. If the department determines upon further investigation that
11 the objects are probably funerary objects, the department shall comply
12 with (c) of this section.

13 (c) If human remains or funerary objects described in (a) and
14 (b) of this section are not disinterred, the department shall leave
15 them in the place where they are interred. If the human remains or
16 funerary objects are disinterred and the decedent's living descendants
17 are reasonably identifiable, the department shall, by certified mail,
18 notify the decedent's relative with the closest kinship ties that the
19 remains and funerary objects are available for disposition. If the
20 remains and funerary objects include Native human remains or funerary
21 objects and the department is unable to ascertain the existence and
22 address of living descendants of the decedent, the department shall
23 determine with as much specificity as possible their tribe of origin
24 and notify the governing body of the tribe of their discovery and
25 location. If a specific tribe of origin is not reasonably identi-
26 fiable, the department shall, by certified mail, give the notice of
27 the discovery and its location to the governing body of the tribe
28 whose members predominate in the vicinity of the discovery.

29 (d) At the request of a descendant or the governing body of a

1 tribe notified under (c) of this section, the department shall provide
2 for access to the remains or funerary objects so that the descendant
3 or the tribe may dispose of them. A tribe may not be allowed to have
4 access until the tribe's plan for disposition of the remains or ob-
5 jects has been submitted to the department. If, within 120 days after
6 notification by the department by certified mail, neither a descendant
7 nor a tribe seeks the right to dispose of the remains or funerary
8 objects, the department shall treat them in the same manner as it
9 treats other unclaimed human remains or historic, prehistoric, and
10 archeological resources under this chapter, as applicable.

11 (e) A person may request a tribe to grant to the person an
12 opportunity to study human remains or funerary objects for which the
13 tribe is granted disposition rights under (c) of this section.

14 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. The governor
15 shall establish committees to resolve disputes concerning the tribe of
16 origin for Native human remains and funerary objects. A committee
17 consists of the state liaison officer appointed under 16 U.S.C. 470 -
18 470n (National Historic Preservation Act) and the following persons,
19 who shall be appointed by the governor as the need arises:

20 (1) a physical anthropologist;

21 (2) a person from each tribe that has a colorable claim to
22 the human remains or funerary objects that are the subject of the
23 dispute; and

24 (3) another resident of the area from which the remains and
25 objects originated who does not meet the requirement of (2) of this
26 section.

27 * Sec. 10. DISPOSITION OF ITEMS ALREADY HELD. (a) A person who on the
28 effective date of this Act possesses human remains or funerary objects,
29 other than a member of a tribe from which the remains or objects

1 originated, shall, within 120 days after the effective date of this Act,
2 notify the Department of Natural Resources of the nature and location of
3 the remains and objects.

4 (b) The department shall prepare an abstract containing indexed
5 information related to the reports made under (a) of this section. The
6 abstract must include, with reference to the remains or funerary objects,

7 (1) the name of the person who possesses them;

8 (2) the permit number under which they were obtained, if appli-
9 cable;

10 (3) their current physical location;

11 (4) the physical location from which they were originally ob-
12 tained;

13 (5) their probable tribe of origin if the remains or objects
14 appear to be Native in origin; and

15 (6) the general time period during which they were originally
16 deposited in or on the ground.

17 (c) The department shall, by certified mail, send the abstract pre-
18 pared under (b) of this section to the governing body of each tribe in the
19 state. The governing body of a tribe may file a claim with the department
20 requesting that Native human remains or funerary objects associated with
21 that tribe be returned to the tribe for disposition. If the governing body
22 of more than one tribe files a claim for the same human remains or funerary
23 objects, a committee established under AS 41.35.420, enacted by sec. 9 of
24 this Act, shall determine which tribe's claim should be honored by the
25 department.

26 (d) If no tribe files a claim for some of the remains or objects
27 under (c) of this section within 120 days after receiving the abstract
28 prepared under (b) of this section, the department shall

29 (1) take possession of those remains and objects; or

1 (2) enter into agreements with persons or institutions for
2 protective custody of the remains and objects.

3 (e) In this section,

4 (1) "department" means the Department of Natural Resources;

5 (2) "funerary objects," "human remains," "Native," and "tribe"
6 have the meanings given in AS 41.35.230, as amended by sec. 8 of this Act.